



PATENT
Docket No.: 16356.723 (DC-01769)
Customer No.: 000027683

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Springer, David S. et al

Serial No. 09/313,436

Filed: May 17, 1999

For: METHOD AND APPARATUS FOR
TRACKING BANNER ADVERTISING

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Group Art Unit: 3622

Examiner: Khanh H. Le

Mail Stop Appeal Briefs – Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450


TRANSMITTAL

Prior to examination, enclosed are the following regarding the above-identified patent application:

1. Brief of Appellant (in triplicate);
2. Check in the amount of \$500.00;
3. Transmittal letter (in duplicate); and
4. Return postcard.

The Commissioner is hereby authorized to charge payment of any fees associated with any of the papers submitted herewith to Deposit Account No. 08-1394.

Respectfully submitted,


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Briefs – Patent, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on

Date

Apr 24, 2006


Susan C. Lien



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BRIEF OF APPELLANT

Mail Stop Appeal Briefs – Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Brief is submitted in connection with an appeal from the Final Rejection of the Examiner mailed to the Applicants on July 20, 2005, finally rejecting claims 1, 4-6, 8, 9 and 26-31, all of the pending claims in this application, and from the Advisory Action of the Examiner mailed on December 6, 2005, responding to the Amendment under 37 CFR §1.116 received on September 22, 2005. Two additional copies of this Brief are submitted herewith.

REAL PARTY IN INTEREST

The real party in interest is Dell Products L.P., a Texas Limited Partnership, having a principal place of business at One Dell Way, Round Rock, Texas 78661, United States of America.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and no related interferences regarding the above-identified patent application.

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STATUS OF CLAIMS

The present application was originally filed on May 17, 1999, as application Serial No. 09/313,436, and originally included claims 1-24, three (3) of which (claims 1, 10 and 17) were independent.

Claims 1-24 were rejected in a first Office Action mailed December 6, 2001.

In response, Applicants filed an Amendment on March 18, 2002. The Amendment canceled claims 11 and 21 and amended claims 1, 7, 10 and 17.

A second and Final Office Action was mailed June 24, 2002, rejecting claims 1-10, 12-20 and 22-24.

In response, Applicants filed an amendment on August 29, 2002. The Amendment canceled claims 10, 12-20 and 22-24, amended claims 1 and 5-9, and added new claims 25 and 26. Thus, claims 1-9, 25 and 26 remained in the Application.

An Advisory Action mailed September 11, 2002, indicated that the Amendment of August 29, 2002, would not be entered because new issues were raised requiring further consideration and/or search.

In response, Applicants filed a CPA transmittal on October 8, 2002.

A non-final Office Action was mailed to the Applicants on December 20, 2002, rejecting claims 1-9, 25 and 26.

In response, Applicants filed an Amendment on April 21, 2003. The Amendment canceled claims 2, 3 and 25 and amended claims 1 and 26. Thus, claims 1, 4-9 and 26 remained in the Application.

A Final Office Action was mailed July 16, 2003, rejecting claims 1, 4-9 and 26.

In response, Applicants filed an Amendment on September 17, 2003, amending claims 1, 4, 8, 9 and 26. Thus, claims 1, 4-9 and 26 remained in the Application.

An Advisory Action mailed October 3, 2003, indicated that the Amendment of September 17, 2003 would not be entered because new issues were raised requiring further consideration and/or search.

In response, Applicants filed an RCE on October 10, 2003, requesting entry of the unentered amendment of September 17, 2003.

A non-final Office Action was mailed to the Applicants on December 31, 2003, entering the Amendment filed on September 17, 2003 and rejecting claims 1, 4-9 and 26.

In response, Applicants filed an Amendment on March 29, 2004, amending claims 1 and 26. Thus, claims 1, 4-9 and 26 remained in the Application.

A Final Office Action was mailed July 29, 2004, rejecting claims 1, 4-9 and 26.

In response, Applicants filed an Amendment on October 1, 2004, amending claims 1, 4 and 26. Claim 7 was canceled and new claims 28-31 were added. Thus, claims 1, 4-6, 8, 9 and 26-31 were presented in the Application.

An Advisory Action mailed November 12, 2004, indicated that the Amendment of October 1, 2004 would not be entered because new issues were raised requiring further consideration and/or search.

In response, Applicants filed an RCE on November 22, 2004, requesting entry of the unentered Amendment of October 1, 2004.

A non-final Office Action was mailed to the Applicants on February 8, 2005, entering the Amendment filed on October 1, 2004 and rejecting claims 1, 4-6, 8-9 and 26-31.

In response, Applicants filed an Amendment on May 5, 2005, amending claims 1 and 26. Thus, claims 1, 4-6, 8, 9 and 26-31 remained in the Application.

A Final Office Action was mailed to the Applicants on July 20, 2005, rejecting claims 1, 4-6, 8, 9 and 26-31.

In response, Applicants filed remarks on September 22, 2005, arguing the Final Rejection of July 20, 2005.

An Advisory Action mailed December 6, 2005, stated that the remarks filed on September 22, 2005 did not place the Application in condition for allowance.

In response, Applicants filed a Pre-Appeal Brief Request for Review on December 27, 2005.

A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on March 23, 2006, indicating that claims 1, 4-6, 8, 9 and 26-31 were rejected and that the Application remains under appeal because there is at least one actual issue for appeal, and requiring Applicants to submit an Appeal Brief in accordance with 37 CFR §41.37.

The status of the claims as set out in the Notice of Panel Decision is as follows.

Claims 1, 4-6, 8, 9 and 26-31 are pending in the application and are rejected.

Claims 1, 4-6, 8, 9 and 26-31 are being appealed.

Claims 1, 4-6, 8, 9 and 26-31 are set forth in Appendix A, attached hereto.

STATUS OF AMENDMENTS

In response to the Final Office Action mailed to the Applicants on July 20, 2005, Applicants filed remarks on September 22, 2005, arguing the Final Rejection of July 20, 2005.

An Advisory Action mailed December 6, 2005, states that the remarks filed on September 22, 2005 did not place the Application in condition for allowance.

In response, Applicants filed a Pre-Appeal Brief Request for Review on December 27, 2005.

A Notice of Panel Decision from the Pre-Appeal Brief Review was mailed on March 23, 2006, indicating that claims 1, 4-6, 8, 9 and 26-31 were rejected and that the application remains under appeal because there is at least one actual issue for appeal, and requiring Applicants to submit an Appeal Brief in accordance with 37 CFR §41.37.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention, in one embodiment, as now set forth in independent claim 1, relates to a method of tracking information provided to a computer system from an advertisement database and a server accessed by a computer manufacturer comprising:

providing an identifier unique to the computer system, the identifier being imbedded in one of the computer hardware and firmware in the computer system;

the database associating the identifier with information specific to a computer user associated with the computer system;

(See Figs. 1 and 5, specification, page 5, lines 9-21)

the computer user establishing a web connection with the server and transmitting the identifier to the database;

(See Fig. 3, specification, page 6, lines 10-12)

the user logging on to a combination advertisement broker server;

the computer system transmitting the identifier and requesting that a banner advertisement be displayed on the computer system;

(See Figs. 3 and 4, specification, page 6, lines 24-27)

the database checking for the identifier;

a counter accounting for the presence of the identifier; and

based on the number of times the database locates the identifier, the database:

determining which advertisements have been transmitted to the user; and

based on the computer user associated with the identifier receiving a predetermined number of advertisements in a time period, the computer user associated with the identifier:

receiving discounts on advertised computer components from the manufacturer.

(See Figs. 3, 4 and 5, specification, page 7, lines 1-16)

The present invention, in an embodiment, as now set forth in independent claim 26, relates to a method of tracking information to a computer system from a server accessed by a computer manufacturer comprising:

providing an identifier unique to the computer system;
providing a database associating the identifier with information specific to a computer user;

(See Figs. 1 and 5, specification, page 5, lines 9-21)

the user logging on to a combination advertisement broker server;
the computer system transmitting the identifier and requesting that a banner advertisement be displayed on the computer system;

(See Figs. 3 and 4, specification, page 6, lines 24-27)

the database checking for the identifier;
a counter accounting for the presence of the identifier; and
based on the number of times the database locates the identifier, the database;
determining which advertisements have been transmitted to the user; and

based on the computer user associated with the identifier receiving a predetermined number of advertisements in a time period, the computer user associated with the identifier:

receiving discounts on advertised computer components from the manufacturer.

(See Figs. 3, 4 and 5, specification, lines 1-16)

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1, 4-5, 8-9, 26-28 and 30-31 are unpatentable under 35 U.S.C. §103(a) over Guyot (U.S. 6,119,098) (hereinafter "Guyot") in view of Jenkins (U.S. 6,285,983) (hereinafter "Jenkins").

2. Whether claims 6 and 29 are unpatentable under 35 U.S.C. §103(a) over Guyot in view of Jenkins, and further in view of Marsh et al (U.S. 5,848,397) (hereinafter "Marsh").

ARGUMENT

Claim 1 recites limitations that are not recited in claim 26. More specifically, claim 1 recites the identifier being imbedded in one of the computer hardware and firmware in the

computer system, and the computer user establishing a web connection with the server and transmitting the identifier to the database.

Claims 1, 4-5, 8-9, 26-28 and 30-31

The Examiner has relied on Guyot as follows:

As to claims 1, 8, 26 and 30, Guyot discloses:

A method of tracking information provided to a computer system from an advertisement database and associated server, the method comprising:

providing an identifier unique to the computer system, (see at least col. 3 lines 18-22, 25-30, 55-65; Fig. 3 and associated text),

the database associating the identifier with information specific to a computer user associated with the computer system (see at least Fig. 5 and associated text; col. 3 lines 18-22, 25-30, 55-65);

the computer user establishing a web connection with the server and transmitting the identifier to the database (see at least Fig. 5 and associated text);

the user logging onto a combination advertisement broker server (see at least Fig. 5 and associated text),

the computer system transmitting the identifier and requesting that a banner advertisement be displayed on the computer system (see at least col. 3 lines 25-30)

the database checking for the identifier (inherent in the system; see at least col. 3 lines 55-65);

a counter accounting for the presence of the identifier (inherent in the system; a count of one is at least done, see at least col. 3 lines 55-65;

and based on the number of times the database locates the identifier, the database:

determining which advertisements have been transmitted to the user (see at least Figs. 5, 8 and associated text; col. 8 lines 51-65, col. 6 line 64 to col. 7 line 11, col. 3 lines 64-co. 4 lines 16: the server database counts each ad seen by each subscriber with each ad designed to be shown on a particular subscriber a maximum number of times per subscriber and within a time period only; therefore by locating the subscriber ID, at least once, the server database can determine which advertisement not to send if already seen, and which new ads can be sent); and

based on the computer user associated with the identifier receiving a predetermined number of ads in a time period (see at least Figs. 5, 8 and associated test; col. 8 lines 51-65, col. 6 line 64 to col. 7 line 11, col. 3 lines 64-col. 4 lines 16) the user associated with the identifier receiving credits (see at least col. 6 lines 6-29).

Guyot discloses ads presented to a user from some merchant source and consumer remuneration as credits for viewing the ads. However ["Guyot does not specifically disclose the server is accessed by a computer manufacturer or that the credits given for viewing ads are discounts on advertised computer components from the manufacturer."}] However it would have been obvious to one skilled in the art at the time the invention was made to apply GUYOT's method to computer manufacturers to allow this type of merchant to use GUYOT's method. Further, it would have been obvious to one skilled in the art at the time the invention was made to substitute to GUYOT's credits given, discounts on advertised computer components for the manufacturers, in case these latter are involved, to provide credits in a form that is relevant to products that would obviously be likely to be advertised by such merchants computer components.

As to claims 4, 27 (dependent on claims 1 and 26 respectively, Guyot discloses the server hosting the advertisements and informational data (see at least the abstract, advertisements are also informational data).

As to claims 5 and 28 (dependent on claims 1 and 26 respectively), Guyot discloses:

the database searching and locating advertisements that match criteria provided by the computer user during a querying procedure (see at least co. 3 lines 55-65; Fig. 8 step S 601 and associated text)

As to claims 9 and 31 (depending on claims 1 and 26 respectively), Guyot does not specifically disclose that the information specific to the computer user includes one of incentives, bonuses and discounts on a plurality of goods, however it discloses targeted ads (abstract). Official Notice is taken that it is well-known and customary that advertisements often include promotional offers, such as product or service discounts and vouchers, to promote consumption. It would have been obvious to one skilled in the art at the time the invention was made to add targeted discounts to Guyot's targeted ads for the above-stated advantage.

The Examiner has relied on Guyot combined with Jenkins as follows:

Further, Guyot does not specifically disclose that the identifier is stored on a (the user's) hard drive (claims 8 and 30) or is imbedded in the user's computer hardware (claim 1). However, in the analogous advertising art, Jenkins discloses that "*As is known in the art, cookie files may be installed by a web site server on the computer hard disk of a browsing consumer*" (see at least col. 1 lines 18-39).

It would have been obvious to one skilled in the art at the time the invention was made to install the cookie file on the user hard drive to implement the user ID method of Guyot because such cookie implementation technique is well-known as stated in Jenkins.

As detailed below, the Applicants take the position that the Examiner has improperly applied Guyot, has improperly combined Guyot and Jenkins, and has improperly combined Guyot, Jenkins and Marsh.

A. Reference (or references) Fail to Teach or Suggest All Claim Elements

As the PTO recognizes in MPEP §2142:

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

The USPTO clearly cannot establish a *prima facie* case of obviousness in connection with the amended claims for the following reasons.

35 U.S.C. §103(a) provides that:

[a] patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains ... (emphasis added)

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, the references, alone, or in combination, do not teach or suggest the following:

The rejection admits that "Guyot does not specifically disclose the server is accessed by a computer manufacturer or that the credits given for viewing ads are discounts on advertised computer components from the manufacturer and argues that it would have been obvious to one skilled in the art at the time the invention was made to apply Guyot's method to computer manufacturers to allow this type of merchant to use Guyot's method. Further it would have been obvious to one skilled in the art at the time the invention was made to substitute to Guyot's credits given, discounts on advertised computer components for the manufacturers, in case these latter are involved, to provide credits in a form that is relevant to products that would obviously be likely to be advertised by such merchants, computer components."

The rejection also admits that "Guyot does not specifically disclose the information specific to the computer."

The rejection also admits that "Guyot does not specifically disclose that the information specific to the computer user includes one of incentives, bonuses and discounts on a plurality of goods, however it discloses targeted ads (abstract)" and argues that Official Notice is taken that it is well-known and customary that advertisements often include promotional offers, such as product or service discounts and vouchers to promote consumption."

The claimed invention provides a unique identifier imbedded in a system component by the manufacturer associated with a database including information specific to the user of the system provided by the manufacturer.

This is uniquely unlike the Guyot system which provides advertisements to subscribers based on a personal profile provided by that subscriber.

The unique identifier of the present invention is imbedded in a system hardware or software component during manufacture, which is uniquely unlike the cookie file installed on a hard disk drive of a browsing consumer in *Jenkins*.

There is no supporting reference which teaches or suggests tracking information provided to a computer system from an advertisement database accessed by a computer manufacturer to provide discounts to users, based on a user receiving a predetermined number of advertisements that are tracked in a time period and associated with an identifier, as claimed, nor is there a teaching or suggestion of a unique identifier imbedded in a system component by the manufacturer associated with a database including information specific to the user of the system provided by the manufacturer.

Therefore, it is impossible to render the subject matter of the claims as a whole obvious based on a single reference or any combination of the references, and the above explicit terms of the statute cannot be met. As a result, the USPTO's burden of factually supporting a *prima facie* case of obviousness clearly cannot be met with respect to the claims, and a rejection under 35 U.S.C. §103(a) is not applicable.

B. Reference (or references) Does Not Suggest Desirability of the Claimed Combination

There is still another compelling, and mutually exclusive, reason why the references cannot be combined and applied to reject the claims under 35 U.S.C. §103(a).

The PTO also provides in MPEP §2142:

[T]he Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the Examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. ... [I]mpermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

Here, the references do not teach, or even suggest, the desirability of the combination because neither teaches or suggests providing the following:

The rejection also admits that "Guyot does not specifically disclose the identifier is stored on a (the user's) hard drive (claims 8 and 30) or is imbedded in the user computer hardware (claim 1) and argues that in the analogous advertising art, *Jenkins* discloses that "*As is known in the art, cookie files may be installed by a web site server on the computer hard disk drive of a browsing consumer*" (see at least col. 1, lines 18-39).

The use of cookies presents some well-known problems as follows:

1. Cookies do not automatically identify the client computer's owner to enable advertising revenue sharing.
2. Cookies do not automatically allow any correlation between the computer's owner and his individual preferences for targeted advertising.
3. Cookies are lacking in desirable security features because they can be easily altered, deleted, disabled or copied to multiple computers.

Thus, neither of these references provides any incentive or motivation supporting the desirability of the combination. Therefore, there is simply no basis in the art for combining the references to support a 35 U.S.C. §103(a) rejection of the claims.

In this context, the MPEP further provides at §2143.01:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. (emphasis in original)

In the above context, the courts have repeatedly held that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. In the present case it is clear that the USPTO's combination arises solely from hindsight based on the invention without any showing, suggestion, incentive or motivation in either reference for the combination as applied to the claims. Therefore, for this mutually exclusive reason, the USPTO's burden of factually supporting a prima facie case of obviousness clearly cannot be met with respect to the claims, and the rejection under 35 U.S.C. §103(a) is not applicable.

Claims 6 and 29

The Examiner has relied on Guyot in view of Jenkins and further in view of Marsh as follows:

As to claims 6 and 29 (dependent on claims 5 and 28 respectively), Guyot does not specifically disclose that if no matching criteria is found, the database transmitting one of generic advertisements and no advertisements. However, in analogous arts, Marsh discloses that default (generic) ads or no ads are displayed when no other criteria for display are met (see at least col. 13 lines 40-53) as a display default method. It would have been obvious to one skilled in the art at the time the invention was made to add this display default method to Guyot for the above-stated advantage.

Claims 6 and 29 depend from and further limit claims 5 and 28, respectively, and thus are also not rendered obvious by the combination of Guyot, Jenkins and Marsh.

CONCLUSION

Accordingly, it is respectfully submitted that the combination of Guyot, Jenkins and Marsh does not teach or suggest all of the claimed elements and does not suggest the desirability of the claimed combination.

PATENT

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For all of the foregoing reasons, it is respectfully submitted that claims be allowed. A prompt notice to that effect is earnestly solicited.

Respectfully submitted,



James R. Bell
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Dated: _____

4-24-06

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on

Date

Apr 24, 2006



Susan C. Lien

CLAIMS APPENDIX

1. (Previously Presented) A method of tracking information provided to a computer system from an advertisement database and a server accessed by a computer manufacturer, the method comprising:
 - providing an identifier unique to the computer system, the identifier being imbedded in one of the computer hardware and firmware in the computer system;
 - the database associating the identifier with information specific to a computer user associated with the computer system;
 - the computer user establishing a web connection with the server and transmitting the identifier to the database;
 - the user logging on to a combination advertisement broker server;
 - the computer system transmitting the identifier and requesting that a banner advertisement be displayed on the computer system;
 - the database checking for the identifier;
 - a counter accounting for the presence of the identifier; and
 - based on the number of times the database locates the identifier, the database:
 - determining which advertisements have been transmitted to the user; and
 - based on the computer user associated with the identifier receiving a predetermined number of advertisements in a time period, the computer user associated with the identifier:
 - receiving discounts on advertised computer components from the manufacturer.
2. (Canceled)
3. (Canceled)
4. (Previously Presented) The method of Claim 1 further comprising:
 - the server hosting the advertisements and informational data.
5. (Previously Presented) The method of Claim 1 further comprising:
 - the database searching and locating advertisements that match criteria provided by the computer user during a querying procedure.

6. (Previously Presented) The method of Claim 5 wherein if no matching criteria is found, the database transmitting one of generic advertisements and no advertisements.
7. (Canceled)
8. (Previously Presented) The method of Claim 1 wherein the identifier is one of a system code, a system code stored in nonvolatile memory, a unique ID from a microprocessor, a unique ID from a peripheral device and a unique identifier stored on a hard drive.
9. (Previously Presented) The method of Claim 1 wherein information specific to the computer user includes one of incentives, bonuses and discounts on a plurality of goods.
10. – 25. (Canceled)
26. (Previously Presented) A method for tracking information to a computer system from a server accessed by a computer manufacturer comprising:
 - providing an identifier unique to the computer system;
 - providing a database associating the identifier with information specific to a computer user;
 - the user logging on to a combination advertisement broker server;
 - the computer system transmitting the identifier and requesting that a banner advertisement be displayed on the computer system;
 - the database checking for the identifier;
 - a counter accounting for the presence of the identifier; and
 - based on the number of times the database locates the identifier, the database;
 - determining which advertisements have been transmitted to the user; and
 - based on the computer user associated with the identifier receiving a predetermined number of advertisements in a time period, the computer user associated with the identifier:
 - receiving discounts on advertised computer components from the manufacturer.

27. (Previously Presented) The method of Claim 26 further comprising:
the server hosting the advertisements and informational data.
28. (Previously Presented) The method of Claim 26 further comprising:
the database searching and locating advertisements that match criteria provided
by the computer user during a querying procedure.
29. (Previously Presented) The method of Claim 28 wherein if no matching criteria is found,
the database transmitting one of generic advertisements and no advertisements.
30. (Previously Presented) The method of Claim 26 wherein the identifier is one of a
system code, a system code stored in nonvolatile memory, a unique ID from a
microprocessor, a unique ID from a peripheral device and a unique identifier stored on a
hard drive.
31. (Previously Presented) The method of Claim 26 wherein information specific to the
computer user includes one of incentives, bonuses and discounts on a plurality of
goods.

EVIDENCE APPENDIX

There is no evidence submitted pursuant to 37 CFR §§ 1.130, 1.131, or 1.132, nor has any other evidence been entered by the Examiner.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings, and, thus, no copies of decisions exist.